

FUNDAMENTALS OF TRIAL ADVOCACY COURSE

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OPENING STATEMENTS

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The Opening Statement

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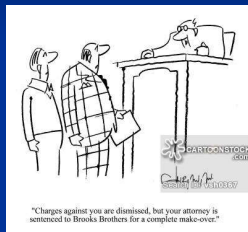
Opening Statements

- Purposes of opening:
 - Get the jury's attention
 - Tell the story in a cohesive way
 - Develop rapport and confidence with the jury
 - Get them thinking (processing information) like you
 - Present your theme and theory in a memorable way



First Impressions Last

- Appearance - All eyes are on you
- Non-Verbal Communication
- Organization



"Charges against you are dismissed, but your attorney is sentenced to Brooks Brothers for a complete make-over."

Opening Statements

- Avoid opening statement babble:
 - Legal mumbo-jumbo (i.e., legalese)
 - Excessive introductions
 - What I say is not evidence...
 - The evidence will show...
 - The purpose of the opening statement...
 - Inform about the law
 - The witness will testify that....

Opening Statement Tips

- Tell a story.
- Create word pictures using descriptive language.
- Personalize the victim/witnesses.
- Use admissible demonstrative evidence.
- Use other visual aids (check with Judge first).

Opening Statements

“Never promise more than you can perform”

Publius Syrus
(c42 B.C.)

Opening Statement Outline

- I. Theme
 - These are the first words out of your mouth
- II. Narrative
 - Frame the issues your way
 - Preview important facts
 - Don't ignore weaknesses
- III. Charges
 - For this reason Defendant is charged with
- IV. Call to Action / Theme

Opening Statements

- | | |
|---|--|
| <ul style="list-style-type: none"> ■ Theory ■ “Why the LAW says you win” <ul style="list-style-type: none"> ■ Simple factual statement that incorporates all facts into a cohesive account. ■ Legal=elements (who, what, when, where) ■ Factual=why and how | <ul style="list-style-type: none"> ■ Theme ■ “Why the jury WANTS you to win” <ul style="list-style-type: none"> ■ Moral Persuasion ■ “This is a case about...” ■ What did D do that deserves punishment? ■ What <i>values</i> do we share as a community that makes this illegal? |
|---|--|

**You can live without a theme;
you will die without a theory.**

Theme

- A word, phrase, or idea that works to remind the jury of your theory
- Often, the theme should address your case's WEAKNESS (*i.e.*, the defense)
- Think about what the defendant did that deserves punishment!

■ EXAMPLES



Don't Think Themes are Effective?




Narrative - Where to Begin

- Determine the Order
 - Chronological
 - Crime
 - Discovery
 - Start at end and explain how it got to that point.
- Determine the Point of View
 - Storytelling is more compelling when you pick a narrative perspective of an involved party rather than an omnipotent POV

Goal of Clarity and Simplicity:

- Possible Points of View
 1. The Victim
 2. The Defendant
 3. An important witness
 4. The all-seeing (God viewpoint)

The police officer  who wrote the DR

Choosing an interesting narrative perspective will make your story much more engaging, compelling, and easy to follow

Descriptive Language



- Contrast :
- “The Defendant pulled out a gun and pointed it at the victim” with...
- “The Defendant stabbed the victim 14 times causing horrible injuries” with...

Descriptive Language

DESCRIPTIVE WORDS			
Large	Fast	Solid	Hard
big colossal enormous gigantic huge massive substantial tremendous	accelerated active agile brisk nimble quick speedy swift	wicked wicked wicked wicked wicked wicked wicked wicked	challenging demanding demanding demanding demanding demanding demanding demanding
Happy	Kind	Small	Weak
blissful cheerful delighted glad glad glad glad glad	benevolent considerate courageous helpful loving patient sweet thoughtful	diminutive tiny miniature minute paltry petty tiny tiny	hike march pace shuffle stiff stout strut swagger
Funny	Easy	Dark	Sad
amusing comic entertaining playful silly humorous whimsical witty	carefree effortless manageable obvious simple straight uncomplicated	dark dark dark dark dark dark dark dark	dejected depressed depressed depressed depressed depressed depressed depressed

Anticipate Defenses

Subtly address these

Do not make
promises about the
Defense's case

Think about how the
Defendant plans to
beat you



“Bad” Facts

- Address problems head-on
 - Victim/Witness with criminal history
 - Mishandled investigation or lack of evidence
- It's not enough just to draw the sting. You must incorporate the “bad” facts into your theory.
 - Example: The victim's criminal past in this case is no accident. The Defendant chose a victim he thought would never tell, and was confident that even if she did, no one would believe her.

Dealing with Weakness

- Attribute “bad facts” to the Defendant
 - Who chooses who the witnesses and victims are in a criminal case?
 - No fingerprints? No videotape? No DNA? – that’s exactly the way the Defendant wanted it
 - Then incorporate into theme/theory: Defendant preys upon the weak; never the powerful, or those with a voice, only the defenseless, the kind he thinks no one cares about

Dealing with Weakness

- Show to the jury you gave them the truth, and the whole truth
 - Weakness is not a big deal they should consider
 - Actually a strength
 - Defendant is still guilty



Opening Statements

- A word about delivery
 - Use of notes
 - Word choice
 - Movement for impact vs. pacing
 - Use of podium
 - Use of exhibits



Opening Statements

- Primacy
 - People will believe what they hear first
- Start out strong!
- Get their attention
- This is your chance to shape the narrative of your case
- Recency
 - People will remember what they hear last
- End strong! – go back to your theme
- Be confident in telling the jury what you want.

Questions???

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